



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVEVLAND OH 44114

COPY MAILED

AUG 30 2007

OFFICE OF PETITIONS

In re Application of :
McCurdy :
Application No. 09/494,954 : Decision on Petition for
Filing Date: February 1, 2000 : Patent Term Adjustment
For: Method and Apparatus for Controlling an :
Actuatable Occupant Protection Device Using :
an Ultrasonic Sensor :

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term adjustment entitled "Reconsideration of the Patent Term Adjustment," received on August 2, 2007. The request is being treated as a petition for corrected patent term extension under 37 CFR 1.701 and 37 CFR 1.181 and a request under 37 CFR 1.705 as Petitioner has argued patent term adjustment provisions. See 35 U.S.C. § 154(b)¹ and 37 CFR § 1.701.

The request under 37 CFR 1.705 is dismissed.

The petition under 37 CFR 1.181 is dismissed.

Petitioner notes that the Notice of Allowance mailed on May 3, 2007, for the above-identified application did not contain an indication of patent term adjustment under 35 U.S.C. § 154(b).

Petitioner contends that the instant application is entitled to 35 months of patent term adjustment as the Office exceeded its three month commitment in responding a total of thirty five (35) months. Petitioner asserts that the application should be eligible for thirty five (35) months of patent term adjustment under the provisions of 35 U.S.C. 154(b).

35 U.S.C. § 154(b)(as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000.

¹35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the prior patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

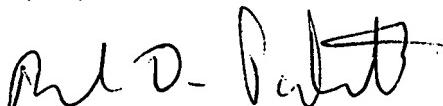
35 U.S.C. § 154(b)(as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113) provides for patent term adjustment for these administrative delays and others in applications filed on or after May 29, 2000.

The above-identified application was filed on February 1, 2000. Accordingly it is entitled to patent term extension based upon the conditions in 35 U.S.C. § 154(b), in effect on June 8, 1995. The provisions of 35 U.S.C. § 154(b) in effect on May 29, 2000 do not apply, because the amended version of 35 U.S.C. § 154(b) only applies to applications filed on or after May 29, 2000. Pursuant to 35 U.S.C. § 154(b), in effect on June 8, 1995, an applicant can receive patent term extension only if there was an appellate review, interference or a secrecy order delays as set forth in the statute. The patent statute only permits extension of patent term based on very specific criteria. The Office has no authority to grant any extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

The delay in the allowance and issuance is regrettable, but the Office has no authority to grant an extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154(b).

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). The required \$200 fee for the petition under 37 CFR 1.705(b) has been paid. Any request for reconsideration of this decision must be submitted as a petition under either 37 CFR 1.182 or 37 CFR 1.183 with the required fee.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy